nominee in American history; Justice Kavanaugh got an astonishing and disgraceful spectacle; and Justice Barrett received baseless, delegitimizing attacks on her integrity.

Now, this history is not the reason why I oppose Judge Jackson. This is not about finger-pointing or partisan spite. I voted for a number of President Biden's nominees when I could support them, and just yesterday, moments after the Judiciary Committee deadlocked on Judge Jackson, they approved another judicial nominee by a unanimous vote.

My point is simply this: Senate Democrats could not have less standing to pretend—pretend—that a vigorous examination of a nominee's judicial philosophy is somehow off limits.

My Democratic friends across the aisle have no standing whatsoever to argue that Senators should simply glance—just glance—at Judge Jackson's resume and wave her on through.

Our colleagues intentionally brought the Senate to a more assertive place. They intentionally began a vigorous debate about what sort of jurisprudence actually honors the rule of law. This is the debate Democrats wanted. Now it is the debate Democrats have. And that is what I will discuss tomorrow—why Judge Jackson's apparent judicial philosophy is not well suited to our highest Court.

VOTE ON MOTION

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion to discharge.

The yeas and nays have been previously ordered.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The result was announced—yeas 50, nays 50, as follows:

[Rollcall Vote No. 127 Ex.]

YEAS—50

Baldwin	Hickenlooper	Reed
Bennet	Hirono	Rosen
Blumenthal	Kaine	Sanders
Booker	Kelly	Schatz
Brown	King	Schumer
Cantwell	Klobuchar	Shaheen
Cardin	Leahy	Sinema
Carper	Luján	Smith
Casey	Manchin	Stabenow
Coons	Markey	Tester
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warnock
Feinstein	Murray	Warren
Gillibrand	Ossoff	Whitehouse
Hassan	Padilla	Wyden
Heinrich	Peters	

NAYS—50

Barrasso	Ernst	McConnell
Blackburn	Fischer	Moran
Blunt	Graham	Murkowski
Boozman	Grassley	Paul
Braun	Hagerty	Portman
Burr	Hawley	Risch
Capito	Hoeven	Romney
Cassidy	Hyde-Smith	Rounds
Collins	Inhofe	Rubio
Cornyn	Johnson	Sasse
Cotton	Kennedy	Scott (FL)
Cramer	Lankford	Scott (SC)
Crapo	Lee	Shelby
Cruz	Lummis	Sullivan
Daines	Marshall	Thune
Tillis	Toomey	Wicker
	Tuberville	Young

(Mr. PADILLA assumed the Chair.)

The VICE PRESIDENT. On this vote, the yeas are 50, the nays are 50.

The Senate being equally divided, the Vice President votes in the affirmative, and the motion is agreed to.

The nomination is discharged and will be placed on the calendar.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. PADILLA). Under the previous order, the Senate will resume legislative session.

The majority leader.

EXECUTIVE SESSION

EXECUTIVE CALENDAR—Motion to Proceed

Mr. SCHUMER. Mr. President, I move to proceed to executive session to consider Calendar No. 860.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Mr. SCHUMER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 128 Leg.]

YEAS—53

Baldwin	Hickenlooper	Reed
Bennet	Hirono	Romney
Blumenthal	Kaine	Rosen
Booker	Kelly	Sanders
Brown	King	Schatz
Cantwell	Klobuchar	Schumer
Cardin	Leahy	Shaheen
Carper	Luján	Sinema
Casey	Manchin	Smith
Collins	Markey	Stabenow
Coons	Menendez	Tester
Cortez Masto	Merkley	Van Hollen
Duckworth	Murkowski	Warner
Durbin	Murphy	Warnock
Feinstein	Murray	Warren
Gillibrand	Ossoff	Whitehouse
Hassan	Padilla	Wyden
Heinrich	Peters	

NAYS—47

Barrasso	Graham	Portman
Blackburn	Grassley	Risch
Blunt	Hagerty	Rounds
Boozman	Hawley	Rubio
Braun	Hoeven	Sasse
Burr	Hyde-Smith	Scott (FL)
Capito	Inhofe	Scott (SC)
Cassidy	Johnson	Shelby
Cornyn	Kennedy	Sullivan
Cotton	Lankford	Thune
Cramer	Lee	Tillis
Crapo	Lummis	Toomey
Cruz	Marshall	Tuberville
Daines	McConnell	Wicker
Ernst	Moran	Young
Fischer	Paul	

The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDING OFFICER (Mr. LUJÁN). The clerk will report the nomination.

The bill clerk read the nomination of Ketanji Brown Jackson, of the District of Columbia, to be an Associate Justice of the Supreme Court of the United States.

CLOTURE MOTION

Mr. SCHUMER. Mr. President, I proudly and happily send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 860, Ketanji Brown Jackson, of the District of Columbia, to be an Associate Justice of the Supreme Court of the United States.

Charles E. Schumer, Richard J. Durbin, Patrick J. Leahy, Dianne Feinstein, Sheldon Whitehouse, Amy Klobuchar, Christopher A. Coons, Richard Blumenthal, Mazie K. Hirono, Cory A. Booker, Alex Padilla, Jon Ossoff, Patty Murray, Raphael G. Warnock, Sherrod Brown, Elizabeth Warren, Margaret Wood Hassan, Tina Smith, Ben Ray Luján, Jacky Rosen.

The PRESIDING OFFICER. The Senator from Texas.

NOMINATION OF KETANJI BROWN JACKSON

Mr. CORNYN. Mr. President, later this week, perhaps in a day or two, the Senate will vote on the nomination of Judge Ketanji Brown Jackson to serve as a member of the U.S. Supreme Court.

Last week, I laid out my reasons for my opposition to this nomination, and yesterday, I voted against her nomination in the Judiciary Committee. But I want to make clear that my vote against Judge Jackson is not a rebuke of her legal knowledge, her experience, or her character. Judge Jackson is obviously very smart. She has vast practical experience, which I think is very useful. She is likeable. And she is very clearly passionate about her work.

The Senate's constitutional duty to provide advice and consent, though, requires us to look beyond Judge Jackson's resume and personality to understand her judicial philosophy and the lens through which she views her role as a judge.

Certainly, the Senate must evaluate whether Judge Jackson will act fairly and impartially. We have also got to make a judgment whether she will leave her personal beliefs and her policy preferences at the door and whether she will respect the bounds of her role as a judge or attempt to establish new judge-made law.

This last point is absolutely critical, in my view. The Founders wisely established a system of checks and balances to ensure that no person or institution wields absolute power. The legislative branch, of course, makes law; the executive branch enforces the law; and the judicial branch interprets the law. We have each got our responsibilities under the Constitution.

And while that is certainly a simplification of the duties of each of the three branches, it does illustrate that there are separate lanes or roles for each branch in our constitutional Republic. And we talked about that during Judge Jackson's confirmation hearing.

The judge said she understands the importance of staying in her lane. She used that phrase many times during the confirmation hearing. She said she would not try to do Congress's job making laws.

But over the years—and I think this is a blind spot for Judge Jackson and, frankly, many on the bench, particularly at the highest levels. Over the years, we have come to see a pattern of judges who embrace the concept of judge-made law.

In other words, it is not derived from a statute passed by the Congress, it is not derived from the text of the Constitution itself, but rather, it is made as a policy judgment without any explicit reference in the Constitution itself. Now, that, I believe, is judicial policymaking or legislating from the bench.

The Supreme Court over the years has developed various legal doctrines like substantive due process. That is a little more opaque, I would think, to most people than judge-made law, but basically, it is the same thing. It is a doctrine under which judges create new rights that are not laid out in the Constitution.

It shouldn't matter if a person ultimately agrees or disagrees with this new right. If you like the result, well, you are liable to overlook the process by which the judges reached a decision. But if you disagree with it, then, clearly, it is a problem to have judges—unelected, unaccountable to the voters—making policy from the bench, no matter what it is called.

It is deeply concerning, I think—and it should be—to all Americans, to have nine unelected and ultimately unaccountable judges make policies that affect 330-or-so million people and they can have no say-so about it at all. They can't vote for them; they can't vote them out of office; they can't hold them accountable. In fact, the whole purpose of judicial independence is so judges can make hard decisions, but they have to be tethered to the Constitution and the law, not made up out of whole cloth.

No judge is authorized under our form of government to rewrite the Constitution to their liking or impose a policy for the entire country simply because it aligns with their personal belief or their policy preferences.

As our Founders wrote in the Declaration of Independence:

> Governments are instituted among Men, deriving their just powers from the consent of the governed.

When judges find unenumerated and invisible rights in the Constitution and issue a judgment holding that, in essence, all State and Federal laws that contradict with their new judge-made law is invalid and unconstitutional, there is no opportunity for anybody to consent to that outcome like you would if you were a Member of the Senate or a Member of the House. People could lobby us. They could call us on the phone. They could send us emails, use social media to try to influence our decision. They could recruit somebody to run against us in the next election. They could vote us out of office if they didn't like the outcome.

But none of that would apply to lifetenured, unaccountable Federal judges making judge-made law at the highest levels—no consent of the governed, no legitimacy which comes from consent.

Abraham Lincoln made clear that it is the concept of consent that is the foundation for our form of government. He said famously: No man is good enough to govern another man without that man's consent.

Of course, he used that in the context of slavery, and he was right; but it has broader application as well.

As I said, when it comes to the executive and legislative branches, it is easy to see how consent and the legitimacy that flows from that comes into play. Voters cast their ballot for Senators, for Members of the House, for the President.

Once a person is in office, voters conduct what you could describe as a performance evaluation. The next time that person is on the ballot, voters determine whether that person should remain in office or be replaced by someone new.

But, again, that is not true of the judicial branch, which highlights and demonstrates why the judicial branch is different, why it shouldn't be a policy maker, why judges shouldn't be pronouncing judge-made law that is not contained in the Constitution itself.

It is important that our courts remain independent and be able to make those hard calls, but even people like Justice Breyer, who Judge Jackson will succeed on the Supreme Court, has written books worried about the politicization of the judiciary, and I think that is one reason why our judicial confirmation hearings can get so contentious—witness Brett Kavanaugh's confirmation hearing, which was a low point, I believe, for the Senate Judiciary Committee and for the Senate as a whole.

But people wouldn't get so exercised over these nominations if people were simply calling balls and strikes like the umpire at a baseball game. Judges should be umpires; judges should not be players.

So Justices on the Supreme Court are not held accountable at the ballot box, and they aren't evaluated every few years for their job performance. They are nominated by the President and confirmed for a lifetime appointment.

When Justices engage in blatant policymaking, it takes away the power of ''we the people'' to decide for ourselves and hold our government accountable. It speaks to that statement in the Declaration of Independence that says government derives its just powers from the consent of the governed. But that is totally missing when it comes to judge-made law and identifying new rights that are nowhere mentioned in the Constitution.

Again, I understand, when you like the outcome as a policy matter, you are not liable to complain too much. But we should recognize this over the course of our history as a source of abuse by judges at different times in our history, and we have seen the horrible outcomes of things like Plessy vs. Ferguson, where the Supreme Court, without reference to the Constitution itself, using this doctrine of substantive due process, said that ''separate but equal'' was the answer for the conflict between the rights of African-American schoolchildren and the rest of the population. They said it is OK. You can satisfy the Constitution if you give them separate but equal educations.

Well, of course, that is a shameful outcome, and we would all join together in repudiating that kind of outcome. And, thankfully, years later—too many years later—Brown v. Board of Education established that the ''separate but equal'' doctrine was overruled, and that is as it should be.

But the point I am trying to make here is whether it is the Court's decisions on abortion or the right to marry a same-sex partner or separate but equal, or even things like the Dred Scott decision, which held that African-American fugitive slaves were chattel property, or in the famous Lochner case, where the New Deal Justices struck down an attempt by the government to regulate the working hours of bakers in New York.

All of these involved the use of this substantive due process doctrine as a way to cover up and hide the fact that it was judges making the law and not the policymakers who run for office.

I am also afraid that Judge Jackson did not always adhere to her own admonition that judges should stay in their lane. In the case Make the Road New York v. McAleenan, the American Civil Liberties Union challenged a regulation involving expedited removal of individuals who illegally cross our borders and enter into the country.

The Immigration and Nationality Act gives the Department of Homeland Security Secretary ''sole and unreviewable discretion'' to apply expedited removal proceedings. Judge Jackson, who presided over the case challenging that rule, ignored the law. She went beyond the unambiguous text to deliver a political win to the people who brought the lawsuit.

She barred the Department of Homeland Security from using expedited removal proceedings to deter illegal immigration. She stopped the administration from enacting immigration policies it had clear authority to implement according to the black-letter law. Unsurprisingly, that decision was appealed and ultimately overturned by the DC Court of Appeals. But this is an example of not staying in your lane and not deferring to Congress the authority to make the laws of the land when the Congress has been unambiguously clear.

So, ultimately, I believe that demonstrates a willingness to engage in judicial activism and achieve a result, notwithstanding the facts and the black-letter law in the case, and to disregard the law in favor of a political win for one of the parties.

But this is just exactly what I started off talking about. This is the opposite of consent of the governed, when judges ignore the laws passed by Congress, even when congressional intent is clear.

Unfortunately, that wasn't the only example of activism in Judge Jackson's decisions. We have heard a lot about this, and I think it was an entirely appropriate subject for questions and answers. Judge Jackson is an accomplished and seasoned lawyer and judge, and she knows how to answer hard questions.

During sentencing hearings, Judge Jackson has said she disagreed with certain sentencing enhancements for policy reasons. That is the word she used—for policy reasons—and she chose to disregard its application. That is not staying in your lane.

She also used a compassionate release motion to retroactively slash a dangerous drug dealer's criminal sentence because she didn't like that the government brought a mandatory minimum drug charge, even though the government had every right to do so under the applicable law.

The promise of equal justice under the law requires judges to follow the law regardless of their own personal feelings about the policy. Justice Scalia famously said that if a judge hasn't at one time or another in his or her career rendered a judgment that conflicts with their own personal preferences, then they are probably not doing their job right.

It is absolutely critical for our Supreme Court Justice to not only acknowledge but to respect the limited but important role that our judges play in our constitutional Republic. They shouldn't allow politics or policy preferences to impact their decisions from the Bench, and they can't use their power to invalidate the will of the American people based on invisible rights that aren't actually included in the Constitution itself.

In 1953, Judge Robert Jackson observed that the Supreme Court is ''not final because [it is] infallible, but [it is] infallible only because [it is] final.''

In other words, the recourse that we the people have when judges overstep their bounds when it comes to constitutional interpretation is to amend the Constitution itself—something that has only happened 27 times in our Nation's history—and it is a steep hill to climb, to be sure.

But it is important for the legitimacy of the Supreme Court itself for the judges to be seen as staying in their lane and interpreting the law, not making it up as they go along. I am reminded of another quote about the scope of the Judiciary's duties and powers. In 1820, Thomas Jefferson wrote, ''To consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy.''

Once again, our Founders, our Founding Fathers, had the wisdom to establish three branches of government to share power to avoid any single person or institution from wielding absolute power, and to ensure that we maintain the proper balance of power, Justices need to stay in their lane and interpret the law, not make the law, particularly when the voters have denied consent from them for doing so.

So to summarize, to ensure that we maintain the proper balance of power under our Constitution, judges must only interpret the law and they can't allow activism to bleed into their decisions and they can't ignore black-letter law and they can't use doctrines like substantive due process to hide the fact that they are making up new rights that aren't contained anywhere in the written Constitution itself.

As I said before, I fear that, if confirmed, Judge Jackson will attempt to use her vast legal skills to deliver specific results and get outside of her lane by making judge-made laws that are not supported by the text of the Constitution itself. As I said in the Judiciary Committee, and I will say again, when the time comes to vote on Judge Jackson's nomination here on the Senate floor, I will once again vote no for the reasons I just stated.

The PRESIDING OFFICER. The Senator from Missouri.

UNANIMOUS CONSENT REQUEST—S. 3951

Mr. HAWLEY. Mr. President, I rise today to urge the Senate to take action to crack down on child pornography offenders and to protect our children. This is a growing crisis, and it is one that is near to the heart of every parent in America. I can attest to that as a father of three small children myself. I have got a 9-year-old, a 7-year-old, and a 16-month-old baby at home.

But I can also attest to it as a former prosecutor. As the attorney general for the State of Missouri, one of the first things I did was establish a statewide anti-human trafficking initiative and task force because what I saw as attorney general of my State was that human trafficking, including, unfortunately, child sex trafficking, is an exploding epidemic.

In my State and around our country, children are exploited, children are trafficked. And those who work in this area and those who prosecute in this area—law enforcement who work day in and day out—will tell you that the explosion of child pornography is helping to drive this exploding epidemic of child sexual exploitation and child sex trafficking.

The problem is that child porn itself is exploding. A New York Times investigative reporter found that in 2018, there were 45 million images of children being sexually exploited available on the internet—45 million. Just a few years before, it had been 3 million and in 2018, 45. Then, last year, the National Center for Missing and Exploited Children found that that number had grown to 85 million—85 million images on the internet of children being brutally sexually exploited.

And as every prosecutor and every law enforcement advocate and every law enforcement agent who works in this area will tell you, that explosion of this material—which, by the way, is harmful in and of itself, is exploitative in and of itself—is driving a crisis of child exploitation and child sex trafficking in this country.

Now the nomination of Judge Ketanji Brown Jackson to the Supreme Court has helped bring this issue front and center. Her record of leniency to child sex offenders has been much at the center of her hearings, and it has startled the public. A recent Rasmussen survey found that following her hearings, 56 percent of all respondents said that they were troubled by her record on child sex offenders. That included 64 percent of Independents.

And they are right to be troubled. Her record is indeed startling. In every case involving child pornography where she had discretion, she sentenced below the Federal sentencing guidelines, below the prosecutor's recommendations, and below the national averages.

We now know that the national average for possession of child pornography—the national sentence imposed, on average, is 68 months. Judge Jackson's average is 29.3 months. The national average sentence for distribution of child pornography: 135 months; Judge Jackson's average, 71.9 months.

In fact, it is true for criminal sentencing across the board. The national average of all criminal sentences imposed in the United States, 45 months; Judge Jackson's average, 29.9 months.

This is a record of leniency. In the words of the Republican leader, leniency to the ''extreme'' to child sex offenders and on criminal matters in general.

But—but, but, but—we are told, and have been told for weeks on end now, it is not really her fault. We were told by the White House and Senate Democrats that it is not her fault because those Federal sentencing guidelines that she, in every case where she could went below—those guidelines aren't binding. Thanks to the decision by the Supreme

Court, by Justice Breyer and Justice Stevens, those guidelines are only advisory. And so we were told, repeatedly, that if we really want to get tougher sentences for child porn offenders, then we are going to have to change the law.

In fact, I see my friend Senator DURBIN here today, the chairman of the Judiciary Committee. He said this to me multiple times during the committee.

On March 22, he said to me:

I hope we all agree that we want to do everything in our power . . . to lessen the incidence of pornography and exploitation of children. . . . I . . . want to tell you, Congress doesn't have clean hands. . . . We haven't touched this for 15, 16 or 17 years.

Senator DURBIN went on:

We have created a situation because of our inattention and unwillingness to tackle an extremely controversial area in Congress and left it to the judges. And I think we have to accept some responsibility.

And he went on:

I don't know if you—

Meaning me—

have sponsored a bill to change this. I will be looking for it. . . . If we're going to tackle it, we should.

Well, I agree with that 100 percent. I agree we should tackle it. This is the time to tackle it, and I am here to do that today. I am proud to sponsor and introduce legislation along with my fellow Senators MIKE LEE and THOM TILLIS and RICK SCOTT and TED CRUZ to get tough on child porn offenders.

Now, let's be clear. When Congress wrote the child pornography Federal sentencing guidelines, and it is Congress that wrote them substantially, way back in 2003—when Congress wrote them, they wanted them to be binding. Congress meant for these guidelines to bind Federal judges. The Supreme Court struck those guidelines down.

Now it is time to put it back into place. My bill would put a new mandatory—mandatory—sentence of 5 years for every child porn offender who possesses pornography, 5 years. If you do this crime, you ought to go to jail. It would make the guidelines binding for any and all facts found by a jury or found by a judge in a trial, restore the law to what Congress intended back in 2003, take away discretion from judges to be soft on crime, and get tough on child sex offenders. That is what this bill would do.

Now, I called this bill the Protect Act of 2022 because it is modeled on the PROTECT Act of 2003, when Congress wrote these guidelines. And I would just note for the record that I believe every Senator voted for it back in 2003, including the chairman of the Judiciary Committee, Senator DURBIN, and every member of the Judiciary Committee, Republican and Democratic, who was serving at the time.

That act back in 2003 toughened penalties for child porn offenders, made the guidelines mandatory, and explicitly took away discretion from judges to sentence below the guidelines.

I think it was a pretty good law, and I think now is the time to act. Our children are at risk. The epidemic of sexual assault, sexual exploitation, and victimization is real.

And let's be clear what child pornography is. It is an industry—an industry that feeds on the exploitation of the most vulnerable members of our society, that feeds on the spectator sport of child abuse and child victimization.

If you have a lot of images of child pornography, you ought to go to jail for a long time. If you possess child pornography, you ought to go to jail for at least 5 years. And, yes, it is time for every judge in America to get tough on child porn. That is what this bill would do, and I urge the Senate now to take this opportunity to act.

So as if in legislative session, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of S. 3951, and the Senate proceed to its immediate consideration; I further ask that the bill be considered read a third time and passed and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

The majority whip.

Mr. DURBIN. Mr. President, reserving the right to object. I have to ask myself, why now? Why does the junior Senator from Missouri bring this bill to the floor of the U.S. Senate today?

When you think back, this matter has been considered. Originally, the guidelines were considered in 1984. The question of child pornography came back to us in 2003.

In 2005, there was a Supreme Court case about applying the guidelines on sentencing to these types of cases—a case known as Booker. We know that in 2005, that decision was handed down.

We know that in 2012, the Sentencing Commission said to Congress and to the world that you need to do something here. These guidelines that you promulgated don't reflect the reality of today.

We know, as well, that the guidelines were written—some were written in an era when the materials we are talking about were physical materials. And we now live in the world of internet and access to not just tens and hundreds but thousands of images, if that is your decision.

And all these things have happened, and we come here today—today. I don't know exactly how many years the Senator from Missouri has been in the Senate, but to my knowledge, this is his first bill on this subject that he has presented in the last few weeks. And I wonder why—why now?

Are there valid questions about sentencing guidelines? Certainly, there is no question about it. I said as much, and he quoted me.

The Sentencing Commission told us over a decade ago, in 2012: You have got a problem here. The world has changed, and the law doesn't reflect it.

But this is the first time, to my knowledge, that the Senator from Missouri or any Republican Senator has tried to enact legislation on the subject. Why now? Well, I know why. He said as much. It is because we are now considering the nomination of Judge Ketanji Brown Jackson to the Supreme Court.

This Senator has suggested over the course of the last 2 weeks in hearings before the Senate Judiciary Committee that somehow this judge—this judge who is aspiring to the Supreme Court—is out of the mainstream when it comes to sentencing in child pornography cases.

It is no coincidence that the Senator from Missouri comes to the floor today while Judge Jackson's nomination is pending on the Senate calendar. It was discharged from our committee by a bipartisan vote in the Senate last night. It is no coincidence that he is raising this issue within hours or days before her confirmation vote. It is one more, very transparent attempt to link Judge Ketanji Brown Jackson's confirmation with this highly emotional issue of Federal sentencing when it comes to child pornography or child exploitation.

There are some political groups—at least one well-known political group—that manufacture theories about child pornography, pedophilia, and the like and that even inspire deadly reactions to them, and they are cheering this on. I have seen their reactions already, this morning, in the newspaper. They are watching this and hoping that someone can keep this issue alive on the floor of the U.S. Senate—for them.

The Senator from Missouri has even gone so far as to make the outrageous claim that this woman, Judge Jackson—the mother of two wonderful girls, whom I had a chance to meet, a mother who comes to this issue not only as a judge but as the sister and niece of law enforcement officials who have been part of her family—in the words of the Senator from Missouri, that this woman ''endangers children''—''endangers children.''

Mr. HAWLEY. Will the Senator yield for a question?

Mr. DURBIN. I will yield when I am finished.

One conservative former prosecutor called Senator HAWLEY's charges ''meritless to the point of demagoguery.''

I have read so many reviews of the Senator's charges against this judicial nominee, and not one of them gives him any credence. They basically say: What you are dealing with here is a complicated area of the law, a controversial area of the law, and to try to ascribe to this one nominee these motives, these outcomes, is baseless and meritless.

Consider this: How can this judicial nominee possibly have the endorsement of the largest law enforcement organization in America—the Fraternal Order of Police—the endorsement of the International Association of Chiefs of Police, and many other law

enforcement groups—how could she possibly have all of that and be as wrong on a critical issue as the Senator from Missouri has asserted?

How is it possible that the American Bar Association took a look at all of her contacts as a judge, as a lawyer, as a law student and came up with 250 individuals who knew her personally, appeared in court with and against her, judged her in her individual capacity as a lawyer—how can the American Bar Association interview those 250 and find no evidence of the charges that have been made by the Senator from Missouri? How is it possible that they would review all of this and miss such a glaring fact? They didn't.

They told us, under oath, that they were asked point blank: Is her sentencing standard soft on crime? different than other judges?

The answer was no, no.

The net result of it was that the American Bar Association found this nominee, whom the Senator from Missouri charges with these outrage claims—they found her to be unanimously ''well qualified''—unanimously ''well qualified.'' Yet the Senator from Missouri believes that he has discovered something that the whole world has missed. Unfortunately, he is wrong, and he doesn't admit it.

When Judge Jackson is confirmed to the Supreme Court—and I pray that she will be later this week—it will be in part because she is a thoughtful, dedicated person who has worked as a judge for over 10 years. She has published almost 600 written opinions. She has had 100 cases wherein she has imposed criminal sentences and a dozen-plus cases involving children.

What the Senator from Missouri has done is to cherry-pick arguments from one small part of her service on the bench that has been debunked across the board. But let me say it again: Judge Jackson's sentences were appropriate exercises of discretion as a judge in applying the law to the facts in difficult cases.

It is interesting to me how the Senator from Missouri has carefully drawn lines to exclude Trump appointees to the bench who have done exactly what this judge has done as well—so-called deviate from the guidelines when it has come to sentencing. In fact, one judge from his State, from the Eastern District of Missouri, whom he has personally endorsed as a good judge—and he may well be—has followed the same practice as this judge. Did he raise that at all in the Senate Judiciary Committee about the Missouri judge who was doing the same thing as Judge Jackson? No, nothing.

There is nothing about these judges that is deviating from other-than-accepted practices. When 70 to 80 percent of sentences handed out by judges across America are using the same standard, Judge Jackson is in that mainstream, along with judges whom this Senator from Missouri has endorsed.

If this issue needs to be addressed—and I believe it does—we can do so if we do it carefully, and we should do it carefully. Make no mistake, I don't back off from my words. As a father, as a grandfather, as a caring parent, I sincerely consider this to be one of the most serious crimes—the exploitation of children. I can't think of anything worse.

The pornography issue certainly is out of control because of the internet and because of those who are making a dollar on it. We should take it very seriously—very seriously. It changes and destroys lives. But let's make sure we do this in the right way.

What have we done in the Senate Judiciary Committee?

It is great for the chairman to stand on the Senate floor and talk about the issue.

Well, what have you done, Senator?

Let me tell you what I have done, and I think the Senator from Missouri knows it.

We have done what we can to address this issue from many different angles. The committee held a hearing on the FBI's failure to properly investigate allegations against Larry Nassar for assaulting young athletes, Olympic gymnasts included, which enabled the abuse of dozens of additional victims. We called them on the carpet. We put them under oath. We brought the testimony forward. We didn't back away from the issue of child abuse.

Following that hearing, I introduced the Eliminating Limits to Justice for Child Sex Abuse Victims Act, with Senator MARSHA BLACKBURN, a Republican from Tennessee. The Senate has now passed this bipartisan legislation, which would enable those survivors of child sex abuse to seek civil damages in Federal court no matter how long it takes the survivor to disclose the facts of the case.

The committee has also unanimously reported a bill which the Senator from Missouri knows well, the EARN IT Act, which is legislation he has cosponsored with Democratic Senator BLUMENTHAL that will remove blanket immunity for the tech industry for violations of laws related to online child sexual abuse material.

I make no apologies for our approach on this, and there is more work to be done.

I want to tell you that I am tempted to leave it just at that but for one part, one thing I am concerned about.

Our Federal sentencing guidelines have been advisory, not mandatory, since the Supreme Court's 2005 ruling in the Booker case. This bill now being offered on the floor in a very quick fashion by the Senator from Missouri attempts to create mandatory sentencing guidelines for a single category of offense. It is not clear whether it passes the constitutional test of Booker. It could be a waste of time. We don't need to waste time in a critical area of the law that has been so controversial and has been considered and reviewed over decades.

Even so, it is a dangerous slope to go down. Imagine a world wherein every time it was politically advantageous—whether it was a Supreme Court nominee or a headline in the paper—that some Senator could come forward, disagree with a Federal judge in a particular case, and say: Let's pass a mandatory minimum sentencing guideline to take care of the matter.

That is no way to approach the law in a fashion that is used for deterrence and punishment. We need to be thoughtful about it. A subject of this seriousness, of this gravity, deserves more than a driveby on the floor of the U.S. Senate.

I invite my colleague to do his work on this issue as we all should—the work that is required, the work that is required by the seriousness of this matter.

I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Missouri.

Mr. HAWLEY. Mr. President, the Senator asks: ''Why now?'' Why act now?

It is because it is a crisis now, because there are 85 million images of children being exploited on the internet now, because child exploitation is exploding in this country now.

Today, the Senator lays bare on this floor the bait and switch that he and his colleagues have employed.

They say: Oh, Judge Jackson—it is not her fault. You should act on the law to change the law.

But when we come to change the law and do what this Congress did in 2003, to do it now in 2022—a measure that Senator DURBIN supported in 2003—he says: Oh, no, no, we don't need to act now. Why do it now? It is rushed. It is too hurried. Let's do it later. Let's think about it longer.

Then we hear recited again the bizarre claims that somehow child pornography is a conspiracy theory. This is something that Senate Democrats, including the chairman, have repeated over and over and over, led by the White House—the idea that child exploitation is a conspiracy theory.

I would just invite you to look any parent in America in the eye and tell them that the exploitation of children is a conspiracy theory—or any law enforcement agent or any prosecutor or anyone who is working on the exploitation, to combat the exploitation of children in this country. No. It is a crisis, and it is real. The fact that the Senate hasn't acted until now is, I think, shameful for the Senate. But why wait another day?

Now, I look forward, if the Senator is serious. He does hold the gavel in the Judiciary Committee. We could mark this bill up. We could hold hearings. We could take action. I would invite him to cosponsor this bill. He voted for it in 2003. Let's have hearings, then, if we can't vote on it today, if we can't debate it today. Let's have hearings. Let's mark it up. Let's take it seriously. I will wait. I suspect I will be waiting for an awfully long time.

Here is the bottom line: I am not willing to tell the parents of my State that I sat by and did nothing. I am not willing to dismiss child exploitation as just some conspiracy theory. I am not willing to abandon the victims of this crime to their own devices and say: Good luck to you.

No, I am not willing to do that—nor am I willing to excuse Judge Jackson's record of leniency that does need to be corrected. She should not have had the discretion to sentence leniently in the extreme, as she did, nor should any judge in America, in my view. What is sauce for the goose is sauce for the gander. We should fix it for everybody across the board, and we can begin by acting as we did in 2003.

So I am disappointed, but I can't say that I am surprised that this measure has been objected to today. All I can say is that I pledge to my constituents—I pledge to the parents of my State and, yes, to the victims of my State—that I will continue to come to this floor and that I will continue to seek passage of this act until we get action from this Senate to protect children and to punish child pornographers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, after 27 minutes of debate on the floor of the Senate, the Senator now believes we are prepared to change the law that has been debated for decades. He has put in a bill introduced 7 days ago. It has been 7 days he has had passion for this issue—enough to introduce legislation.

If you want to take on a serious issue, take it on seriously, and that means doing the homework on it. Yes, have a hearing. Of course, have a hearing. We want to make sure the people from the Sentencing Commission and others are part of this conversation. It isn't just a matter of throwing charges out against a nominee.

If you want to be serious about it, then admit the obvious: In 70 to 80 percent of cases involving child sexual abuse material, Federal judges struggle with the same sentencing that we have set down. In light of Supreme Court decisions, we understand—I ask for order, Mr. President.

The PRESIDING OFFICER. There was no response to begin with to the Senator, so let's move forward.

Mr. DURBIN. Mr. President, I will say, as far as I am concerned, this is a serious matter that should be taken seriously. You don't become an expert by, 7 days ago, introducing a bill and saying: I have got it. Don't change a word of it. Make it the law of the land. Make it apply to every court in the land.

No. We are going to do this seriously. We are going to do it the right way, and we are going to tackle an issue that has been avoided for more than two decades, when you look at the history of it.

I find this reprehensible—the pornography, this exploitation of children—and there are no excuses whatsoever, but I am not going to do this in a slipshod, make-a-headline manner. We are going to do it in a manner that is serious, one in which we work with prosecutors, defenders, judges, and the Sentencing Commission, and get it right. It is time to get it right.

We wrote this law some 19 years ago, before the internet was as prevalent in society as it is today. Let us be mindful of that as we attack this problem and address it in a fashion that is befitting the Senate and the Senate Judiciary Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. HAWLEY. Mr. President, the Senator from Illinois says that Congress hasn't acted in two decades; that is true. I haven't been here for two decades; he has.

There is no excuse to not take action now. There is no excuse to not act on this problem when we know what the solution is.

So, listen, if the Senator is saying today, if he is committing today, to holding hearings and marking up a bill to toughen the child pornography laws, to make mandatory the sentencing guidelines, that is fantastic. I will take him at his word. I look forward to seeing those hearings noticed and to seeing that markup noticed, and I hope it will be forthcoming.

I am here to make a prediction. I think we will be waiting a very long time, because let's not forget what his party and the Sentencing Commission, stacked with members of his party, have been recommending. It has not been to make child sentences tougher—child pornography sentences tougher. They have wanted to make them weaker.

What the Sentencing Commission has recommended, with its liberal members for years now, is to make them weaker. That is what Judge Jackson has advocated. She also wants to change the guidelines—to make them weaker.

I think that is exactly the wrong move, and that is why the Senator was here to block this effort today. He doesn't want there to be tougher sentences. He doesn't want to talk about this issue. He wants to sweep it under the rug. I am here to say I won't let that happen. I will be here as long as it takes. I will be advocating for this in the Senate Judiciary Committee as long as it takes, until we get justice for the victims of child pornography and child exploitation.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:47 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. SINEMA).

EXECUTIVE CALENDAR—Continued

The PRESIDING OFFICER. The Senator from Arkansas.

NOMINATION OF KETANJI BROWN JACKSON

Mr. COTTON. Madam President, the Senate will soon vote on the nomination of Judge Ketanji Brown Jackson to be Associate Justice of the Supreme Court. I will vote against her nomination.

Judge Jackson may be a fine woman, but she is a dangerous judge. She built her career as a far-left activist, and it didn't change when she put on a robe 10 years ago. She personifies activism from the bench. She has crusaded to undermine criminal sentences, and she cannot be trusted to interpret the law or the Constitution as written.

Judge Jackson's record makes clear that her brief stint as a criminal defense attorney wasn't motivated merely by a devotion to equal representation of all. It was part of a deep commitment to leniency for criminals. Indeed, she has continued to act as a de facto lawyer for criminals from behind the bench as she did from in front of it.

Judge Jackson's average sentences for criminals are 34 percent lighter than the national average for criminal cases and 25 percent lighter than her own court's average, the DC District Court.

Disturbingly, some of the most sensational examples of her soft-on-crime attitudes are cases involving child pornographers. She has given more lenient sentences than recommended by the sentencing guidelines in every single child pornography case where the law allowed it—every single one, every time. Individuals sentenced by Judge Jackson for child pornography possession receive, on average, 57 percent lighter sentences compared to the national average. For child pornography distribution, the sentence is 47 percent lighter than the national average.

These aren't just numbers. These are predators, and they go on to commit more of the most heinous crimes imaginable because Judge Jackson lets them off so easy. In one case, Judge Jackson gave child pornographer Wesley Hawkins just 3 months—3 months—in prison when the sentencing guidelines recommended 8 to 10 years—3 months versus a recommended 8 to 10 years. Judge Jackson even gave him a sentence that was one-sixth as long as what her own probation office recommended. And a few years later, when Hawkins should have still been in prison for his original offense, he did something else that got him 6 more months in custody. That is twice as long as his original sentence.

When all 11 Republicans on the Judiciary Committee sent a letter asking for details of what happened to justify this new sentence, Judge Jackson refused to provide any further information—so much, I guess, for looking at her record, as she urged us to do.

Her leniency isn't limited to child pornographers, either. In 2017, Judge